

*Supplemental
Pension*

AN ORDINANCE REPEALING ORDINANCE NO. 1307 APPROVED February 2, 1955; ORDINANCE NO. 1838 APPROVED May 27, 1967; MARIETTA CITY CODE 1961 §16-1 through 16-8; AND MARIETTA CITY CODE 1979 §4-3002; WITHDRAWING THE CITY OF MARIETTA FROM PARTICIPATION IN THE EMPLOYEES RETIREMENT SYSTEM OF GEORGIA (KNOWN AS SOCIAL SECURITY); AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE ALL DOCUMENTS AND TO PERFORM ALL ACTS NECESSARY TO WITHDRAW THE CITY OF MARIETTA FROM THE EMPLOYEES RETIREMENT SYSTEM OF GEORGIA; TO APPROVE THE ADOPTION OF A SUPPLEMENTAL PENSION RETIREMENT PLAN; TO AUTHORIZE THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO BIND THE CITY OF MARIETTA WITH AETNA LIFE AND CASUALTY COMPANY FOR A SUPPLEMENTAL PENSION RETIREMENT PLAN; TO DIRECT THE CITY CLERK TO ATTEST ALL DOCUMENTS AND OTHER INSTRUMENTS NECESSARY FOR THE PURPOSE OF THIS ORDINANCE; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE: AND FOR OTHER PURPOSES.

BE IT ORDAINED by the Council of the City of Marietta, and it is hereby ordained by the authority of the same, as follows:

1. The City of Marietta does hereby terminate and withdraw from the Employees Retirement System of Georgia (known as Social Security).
2. The Pension Board of the City of Marietta, Georgia, created by Ordinance of the Mayor and Council shall hereby assume the function of trustees of a supplemental pension retirement plan of the City of Marietta.
3. The Pension Board is hereby directed to safeguard the funds of any participating employee of the City of Marietta, Georgia, in all pension, retirement and disability benefits to be provided by the supplemental pension retirement plan. In this regard, the Pension Board is directed to contract with Aetna Life and Casualty Insurance Company as hereinafter provided.
4. The Mayor is hereby authorized and directed to execute any and all documents and other instruments necessary to terminate the relationship of the City of Marietta with the Employees Retirement System of Georgia.

5. In order to secure a successor pension, retirement and disability plan for the employees of the City of Marietta, the Mayor is authorized and directed to execute a benefit accumulation contract with Aetna Life and Casualty Company pursuant to a benefit accumulation contract offer submitted by Aetna Life and Casualty Company to the City of Marietta dated December 18, 1980. Said benefit accumulation contract for which the Mayor is authorized and directed to execute and the accumulation contract offer is attached hereto and incorporated by reference herein as Exhibit "A".

6. Upon a recommendation of the Pension Board, the Mayor is authorized and directed to execute an agreement contracting with the Aetna Life and Casualty Company and providing a supplemental pension plan for all employees currently employed by the City of Marietta, Georgia. A copy of the said supplemental pension plan to which the Mayor is authorized and directed to execute upon recommendation by the Pension Board is attached hereto and incorporated by reference herein as Exhibit "B".

7. Beginning January 1, 1981, the City of Marietta shall pay 6.13% of the salary of regular full-time employees into the supplemental pension retirement plan. The amount so paid shall be immediately vested in each employee's behalf. No employee may be eligible for participation in said supplemental pension retirement plan until the employee has completed one continuous year of service. The City of Marietta shall pay into the plan 6.13% of all the salary of appointed employees up to the maximum salary payable to regular employees as exists in the personnel pay plan ordinance. Funds accumulated under this plan shall be paid to employees only upon retirement, death, disability, or termination of employment.

8. The City Clerk is directed to attest any and all instruments under the seal of the City which the Mayor is authorized and directed to execute by this ordinance.

9. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

10. This ordinance shall be effective upon its passage by the Council of the City of Marietta.

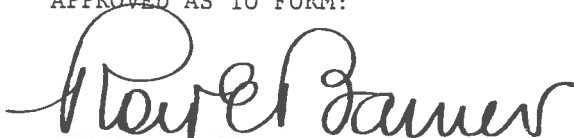
ORDAINED this 30th day of December, 1980.


DANA EASTHAM, Mayor

ATTEST:


BARBARA GOSCHA, City Clerk

APPROVED AS TO FORM:


ROY E. BARNES, City Attorney

COUNCIL BILL NO. 140280

ORDINANCE NO. 3741

EXPLANATION

This ordinance formally withdraws the City from Social Security and establishes the supplemental retirement trust fund. This obviously involves quite a volume of technical detail which should be adopted prior to January 1, 1981 to guarantee this benefit. The benefit accumulation contract with Aetna contains all of the necessary rules and regulations and the investment is only for the first year, 1981.



COUNCIL BILL NO. 140280

ORDINANCE NO. 3741

AN AETNA
BENEFIT ACCUMULATION CONTRACT
OFFER

PREPARED FOR

CITY OF MARIETTA, GEORGIA
SUPPLEMENTAL PENSION PLAN

SUBMITTED BY
AETNA LIFE INSURANCE COMPANY
DECEMBER 18, 1980

Exhibit "A"

BENEFIT ACCUMULATION CONTRACT
METHOD OF OPERATION

The Benefit Accumulation Contract (BAC) provides a guarantee of both interest and principal. Plan permitted distributions and participant-directed transfers to other plan investment facilities (with the exception of a competing fixed fund) are made at book value.

Deposits to a BAC are segregated by year of deposit in Deposit Year Accounts (DYAs). A separate interest rate guarantee applies to each DYA. A DYA is open for deposits for a 12-month period. You can choose from a variety of DYA guarantee periods, ranging up to 10 years. The DYA balance at any time is equal to deposits, plus credited interest, minus withdrawals to date. The DYA matures at the end of the guarantee period. The maturity balance will ordinarily be rolled over and deposited in a new DYA. Alternatively, Aetna will pay the maturity balance to the plan trustee for reinvestment in a different facility.

As indicated above, withdrawals for the purposes of the plan are made at book value. Our standard procedure is to deduct such withdrawals from the current DYA. If the balance in the current DYA is exhausted, the remainder of the withdrawals will be taken pro rata from prior DYAs.

Alternatively, if participant records show the breakdown of each participant's balance among the various DYAs, we are prepared to process withdrawal requests from the appropriate DYAs. Handling withdrawals in this manner enables the plan sponsor to pass Aetna's interest guarantees directly to each plan participant. Thus, greater equity is achieved and participant satisfaction with the performance of the fixed investment option is increased.

To ensure that the plan's provisions can be properly accommodated by this contract, we require a review of the plan before agreeing to issue a contract.

The terms of our contract for the initial DYA are outlined on the offer page. If you find this offer and the sample contract acceptable, please notify us and forward an executed Deposit Agreement.

BENEFIT ACCUMULATION CONTRACT OFFER
FOR
CITY OF MARIETTA, GA., SUPPLEMENTAL PENSION PLAN

Assuming a favorable review of the plan, the terms of the contract for the initial DYA will be as follows:

- | | |
|--------------------------------------|--|
| Offering Date | - December 18, 1980 |
| Expected Date of Initial Deposit | - Mid-January, 1981 |
| Effective Date of Initial DYA | - January 1, 1981 |
| Estimated Deposit to the Initial DYA | - Annual deposit flow of \$500,000 |
| Guarantee Period | - 3 years, 4 years, 5 years or 6 years as selected by the contractholder |
| Annual Effective Interest Rate | - 3 years - 13.23%; 4 years - 13.28%;
5 years - 13.33%; 6 years - 13.38% |
| Asset Charge | - A flat charge of \$1,800 plus a percentage charge determined from the table below: |

Mean Assets		Percentage Charge
First \$	1,000,000	.40%
Next	4,000,000	.30
Next	5,000,000	.20
Next	15,000,000	.12
Next	75,000,000	.09
Next	400,000,000	.07
Next	500,000,000	.06

The above schedule of expense charges is guaranteed on the initial DYA for the duration of its guarantee period.

This offer is good if accepted on or before Friday, December 19, 1980.

This agreement is entered into between Etna Life Insurance Company (herein called "Etna") and City of Marietta, Georgia (herein called "Plan Sponsor"), the Plan Sponsor being empowered to enter into such agreement.

The parties agree as follows:

1. Etna will issue to the Plan Sponsor or to a designated Trustee(s), hereinafter referred to as "Contractholder", a group annuity contract which will reflect the substance of the provisions in the attached proposal.
2. Contractholder will deposit 100% of plan contributions made from January 1, 1981 through December 31, 1981 to the group annuity contract described in item (1). Plan Sponsor estimates the total amount of such deposits to the group annuity contract to be in the range of \$450,000 to \$600,000.
3. Plan Sponsor may cancel this agreement within a period of 20 days after its execution, if during such 20 day period:
 - (i) Plan Sponsor receives written legal advice from its Counsel, for reasons not related to the specific principal and interest guarantees described in the attached proposal, to cancel this agreement, and
 - (ii) Plan Sponsor and Etna cannot mutually agree on an action that would eliminate the reason for Plan Sponsor's Counsel providing legal advice to cancel this agreement, and
 - (iii) Plan Sponsor gives Etna written notice of such cancellation.
4. The Plan Sponsor acknowledges that the conditions stated in the attached proposal for issuance of the group annuity contract will be met by City of Marietta Supplemental Pension Plan and Contractholder before the contract effective date.
5. Before the contract is executed, the Plan Sponsor will provide Etna with a copy of the plan whose assets will be directed to the group annuity contract.
6. If the Contractholder fails to make any deposit as specified in this agreement, the Plan Sponsor agrees to reimburse Etna for the losses it incurs in agreeing to issue the group annuity contract and in arranging for appropriate investments to support contract guarantees. The parties agree that the amount of loss shall be determined as of the date the Contractholder first fails to make a deposit as specified in this agreement and shall equal the product of:
 - (i) the difference between the total amount of deposits payable under this agreement and the amount of actual deposits made; and
 - (ii) the number of years, taken to completed twelfths, between the date the Contractholder first fails to make a deposit as specified in this agreement and the maturity date of the contract, the date the last payment of principal or interest by Etna to the Contractholder is scheduled to be made in accordance with the attached proposal; and
 - (iii) the excess, if any, of (a) the guaranteed interest rate Etna would offer in a current proposal for similar deposit and maturity terms over (b) the guaranteed interest rate contained in the attached proposal.

If there is a reimbursement due, the Plan Sponsor will make the payment within 31 days of the date it receives written notice from Etna of such payment. If such payment is not made within the 31 day period, Etna will withdraw the amount from any deposits held under the group annuity contract.

ETNA LIFE INSURANCE COMPANY

CITY OF MARIETTA, GEORGIA

(Authorized Signature)

(Authorized Signature)

(Date of Acceptance)

(Date of Signature)

MONEY PURCHASE PENSION PLAN



(GR-64080) Ed 1/79

Printed in U.S.A.

Exhibit "B"

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This is an agreement between the Employers and the Trustee named in the attached Adoption Provisions. All references in the Adoption Provisions to an "Agreement" shall mean this Agreement, the terms and conditions of which have been accepted by the parties prior to the execution of this Agreement, as witnessed by their signatures on the Adoption Provisions.

The purpose of the Plan and Trust established by this Agreement is to provide retirement benefits for Employees, and to add to their financial security.

ARTICLE 1. DEFINITIONS

- 1.01 Account Values: The fair market value of each of the accounts established in accordance with Article VIII as determined on any date on which the assets therein are required to be valued.
- 1.02 Adoption Provisions: The portion of this document in which are stated the Employer elections with respect to details of the Plan and Trust established by this Agreement and the acceptance of the Trust by the Trustees named therein.
- 1.03 Etna Variable Fund Accumulation Account: An accumulation facility under the Group Annuity Contract which provides for investment of Plan contributions in participation units of a separate account of Etna Life Insurance Company which invests in shares of Etna Variable Fund, Inc.
- 1.04 Allocated Employer Contribution Accounts: The accounts established and maintained by the Committee under which are recorded the Employer Contributions and earnings thereon allocated to Participants.
- 1.05 Allocation Date: The date, designated as such in Section G of the Adoption Provisions, as of which Employer Contributions are allocated to Participants' accounts.
- 1.06 Anniversary Date: The beginning of each Plan Year following the first Plan Year, as designated in Section F of the Adoption Provisions.
- 1.07 Annual Pay: All payments received by an Employee during a Plan Year for services rendered to the Employer and reportable on Federal Income Tax Form W-2; provided, however, that if any Participant is a Subchapter S Corporation Shareholder Employee in any Plan Year, Annual Pay for any such Participant shall not exceed \$100,000 for such Plan Year. In addition, such payments shall not include any category of income expressly excluded in Section H of the Adoption Provisions.
- 1.08 Balanced Accumulation Account: An accumulation facility under the Group Annuity Contract which provides for investment of Plan contributions in participation units of a separate account of Etna Life Insurance Company, the investment objective of which is to achieve long-term growth through a mix of fixed income and equity investments.
- 1.09 Basic Contribution: The amount of required contributions a Participant contributes to the Plan.
- 1.10 Basic Contribution Account: The account established by the Committee for recording the Participant's Basic Contributions and earnings thereon.

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ARTICLE I. DEFINITIONS (Continued)

- 1.11 Basic Contribution Rate: That amount or percentage of a Participant's Annual Pay which he is required to contribute to the Plan as a condition to participating in the Plan.
- 1.12 Beneficiary: A person designated in accordance with this Plan to receive benefits upon the death of a Participant.
- 1.13 Committee: The named fiduciary or named fiduciaries appointed by the Plan Administrator to manage and control the operation and administration of the Plan.
- 1.14 Early Retirement Date: The first day of any month as of which a Participant retires after having met the requirements for early retirement stipulated in Section J.2 of the Adoption Provisions, but before reaching his Normal Retirement Date.
- 1.15 Effective Date: The effective date of this Plan, as stated in Section F of the Adoption Provisions.
- 1.16 Eligible Class: The class of Employees who may participate in the Plan, as specified in Section I.1 of the Adoption Provisions.
- 1.17 Eligibility Computation Period: Each twelve month period ending immediately before the anniversary of the Employee's employment commencement date.
- 1.18 Employee: A person employed by the Employer.
- 1.19 Employer: Any employer listed as such in Section B of the Adoption Provisions.
- 1.20 Employer Contribution: The amount that the Employer contributes to the Plan.
- 1.21 Group Annuity Contract: An Etna Life Insurance Company contract which provides the investment facilities described in paragraphs 1.03, 1.08, 1.22 and 1.23 and which also provides a facility for distribution upon a Participant's retirement death, disability or other termination of employment.
- 1.22 Index Accumulation Account: An accumulation facility under the Group Annuity Contract which provides for investment of Plan contributions in participation units of a separate account of Etna Life Insurance Company.

The investment objective is to achieve investment performance comparable with the investment performance of the Standard & Poor's Corporation S & P 500 Stock Index. Plan contributions directed to this accumulation facility may be invested in participation units of a short term separate account of Etna Life Insurance Company prior to the allocation of the value of such contributions to such facility.
- 1.23 Interest Accumulation Account: An accumulation facility under the Group Annuity Contract, operated within the general assets account of Etna Life Insurance Company, which provides for investment of Plan contributions at a stipulated rate of interest.
- 1.24 Late Retirement Date: The first day of any month following Normal Retirement Date as of which a Participant retires after his Normal Retirement Date.
- 1.25 Normal Retirement Age: The age as specified in Section J.1 of the Adoption Provisions.
- 1.26 Normal Retirement Date: The later of (a) the date the Employee becomes a Participant or (c) the first day of the month coinciding with or next following the date the Employee attains Normal Retirement Age.

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ARTICLE I. DEFINITIONS (Continued)

- 1.27 Participant: An Employee who participates in the Plan in the manner prescribed and for whose benefit, or for whose Beneficiary, the Trustee holds assets.
- 1.28 Plan: The pension plan set forth in and by this document, including the Adoption Provisions, and all subsequent amendments thereto.
- 1.29 Plan Administrator: The Employer who is designated as such in Section B of the Adoption Provisions and who is responsible for the operation and administration of the Plan.
- 1.30 Plan Year: The periods of time specified in Section F of the Adoption Provisions.
- 1.31 Qualifying Emergency: The occurrence of any of the events characterized as such in Section K.3 of the Adoption Provisions.
- 1.32 Service: Service means employment as an Employee with the Employer. For purposes of determining eligibility for participation in the Plan, a year of Service is the Eligibility Computation Period during which the Employee has been credited with 1,000 hours of Service. For vesting purposes, a year of Service is the Vesting Computation Period in which the Employee is credited with one hour of Service. If Section M.2 (b) of the Adoption Provisions is elected, Service rendered prior to the Effective Date shall not be counted for vesting purposes, notwithstanding any provision in this paragraph 1.32 to the contrary.

A One-Year Break in Service for eligibility purposes is the Eligibility Computation Period during which the Employee has less than one hour of Service.

A One-Year Break in Service for vesting purposes is the Vesting Computation Period during which the Employee has less than one hour of Service.

An hour of Service is:

- (a) each hour for which an Employee is paid or entitled to payment for the performance of duties during the applicable computation period;
- (b) each hour for which an Employee is paid, or entitled to payment by the Employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence during the applicable computation period, and
- (c) each hour for which back pay, irrespective of mitigation of damages, has been awarded or agreed to by the Employer. Such hours will be credited to the computation period to which the award or agreement pertains and shall not include any hours previously credited.

An hour of Service for reasons other than the performance of duties and the crediting of Service to applicable computation periods shall be determined in accordance with the Department of Labor Regulation 2530.200b-2 paragraphs (b) and (c).

1.32 Service (Continued)

If an Employee terminates employment with the Employer and he later returns to Service prior to a One-Year Break in Service, the current value of any non-vested Account Value will remain in his account and any years of Service accrued prior to such break shall be added to any years of Service after the break for eligibility and vesting purposes.

After a break in Service of one year or more, any years of Service accrued prior to such break will be added to any years of Service following the break for eligibility purposes and for purposes of vesting in benefits accrued after such break, except that, if the Employee was not vested in any part of his Employer Contribution account at the time of the break and the number of years of Service accrued prior to the break is not greater than the number of consecutive One-Year Breaks in Service, any years of Service accrued prior to such break shall be ignored for all purposes. In applying the rule in the preceding sentence, any years of Service excluded upon a prior application of this rule shall be ignored. Under no circumstances will benefits previously distributed or forfeited be restored upon a break in Service of one year or more.

For eligibility and vesting purposes, Service shall include employment with any company affiliated with the Employer.

- 1.33 Trust: The legal entity created by this Agreement between the Employer and the Trustee for the purpose of funding the benefits for Participants.
- 1.34 Trustee: The bank, person, or persons that have undertaken to serve as the Trustee under this Agreement.
- 1.35 Unallocated Employer Contribution Account: The account established and maintained by the Committee for recording Employer Contributions and forfeitures held by the Trustee prior to allocation in accordance with the provisions of Article VIII.
- 1.36 Vesting Computation Period: Each twelve month period ending immediately before the anniversary of the Employee's employment commencement date, except if Section M.2(b) of the Adoption Provisions is elected, the Vesting Computation Period for Participants who were Employees of the Employer on the Effective Date of the Plan shall be each twelve month period ending immediately before the anniversary of the Effective Date of the Plan, and the first such Vesting Computation Period shall begin on the Effective Date of the Plan.
- 1.37 Voluntary Contribution: The amount of a Participant's Annual Pay which he voluntarily contributes to the Plan, in addition to any required contributions.
- 1.38 Voluntary Contribution Account: The account established by the Committee for recording the Participant's Voluntary Contributions and earnings thereon.

- 2.01 Appointment of Committee: The Plan Administrator shall appoint and identify one or more natural persons as the Committee, who shall be the named fiduciaries for the Plan and who shall, jointly or severally as determined by the Plan Administrator, have authority to control and manage the operation and administration of the Plan. All usual and reasonable expenses of the Committee shall be paid by the Plan Administrator. Members of the Committee shall not receive compensation with respect to their services.
- 2.02 Agents: The Committee may employ such agents to perform clerical and other services, and such counsel, accountants and actuaries as it may deem necessary or desirable for administration of the Plan.
- 2.03 Procedures: The Committee shall adopt such bylaws as it deems desirable and shall keep all such books of accounts, records and other data as may be necessary for proper administration of the Plan. The Committee shall keep a record of all actions and forward all necessary communications to the Trustee and the Employer.

A written request for a Plan benefit made by either a Participant or Beneficiary is a claim; the person making such claim is a claimant.

Each claim shall be presented to the Committee who shall, within 90 days from its receipt, either accept it or deny it (wholly or partially), and within that time notify the claimant of acceptance, or denial.

If a claim is wholly or partially denied, the Committee shall furnish to the claimant a written notice setting forth in a manner calculated to be understood by the claimant:

- (a) the specific reason(s) for denial;
- (b) specific reference(s) to pertinent Plan provisions on which any denial is based;
- (c) a description of any additional material or information necessary for the claimant to perfect the claim, and an explanation of why such material or information is necessary; and
- (d) an explanation of the Plan's review procedures.

If a claimant does not receive notification of acceptance or denial within 90 days from submission of his claim, he may request review as if his claim had been entirely denied.

Upon denial, the claimant is entitled, either in person or by his duly authorized representative, to

- (a) request a review of the claim by the Committee by written application for review made to the Committee. In the case of a denial as to which written notice of denial has been given to the claimant, any such request for review of the claim must be made within 60 days after receipt by the claimant of such notice;

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2.03 Procedures (Continued)

(b) review pertinent documents relating to the denial; and

(c) submit issues and comments in writing.

The Committee shall make its decision with respect to a review promptly, but not later than 60 days after receipt of the request. Such 60-day period may be extended by another period of 60 days if the Committee reviewing the claim finds that special circumstances require an extension of time for processing.

The final decision of the Committee shall be in writing, give specific reasons for the decision and make specific references to the pertinent Plan provisions on which the decision is based.

2.04 Committee's Powers and Duties: The Committee shall have such powers and duties as may be necessary to discharge its functions hereunder, including but not limited to the following:

(a) To construe and interpret the Plan, to decide all questions of eligibility and to determine the amount, manner and time of payment of any benefits hereunder;

(b) To make a determination as to the right of any person to a benefit;

(c) To obtain from the Employer and from Employees such information as shall be necessary for the proper administration of the Plan, and, when appropriate, to furnish such information promptly to the Trustees or other persons entitled thereto;

(d) To prepare and distribute, in such manner as the Committee determines to be appropriate, information explaining the Plan;

(e) To furnish the Employer, upon request, such reports with respect to the administration of the Plan as are reasonable and appropriate;

(f) To obtain and review reports of the Trustee pertaining to the receipts, disbursements and financial condition of the Trust;

(g) To establish and maintain such accounts in the name of the Employer and of each Participant as are necessary;

(h) To instruct the Trustee with respect to investment of Plan contributions and payment of benefits hereunder.

2.05 Committee's Decisions Conclusive: The Committee shall exercise its powers hereunder in a non-discriminatory manner. Any and all disputes with respect to the Plan which may arise involving Participants or their Beneficiaries shall be referred to the Committee and its decision shall be final, conclusive and binding. Furthermore, if any question arises as to the meaning, interpretation or application of any provision hereof, the decision of the Committee with respect hereto shall be final.

- 2.06 Liability of Committee: In connection with any action or determination, the Committee shall be entitled to rely upon information furnished by the Employer. To the extent permitted by law, the Plan Administrator shall indemnify the Committee against any liability or loss sustained by reason of any act or failure to act in its administrative capacity, if such act or failure to act does not involve willful misconduct. Such indemnification of the Committee shall include attorney's fees and other costs and expenses reasonably incurred in defense of any such act or failure to act. All reference in this paragraph to the Committee shall apply as well to the individual members of the Committee.

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ARTICLE III. PARTICIPATION IN THE PLAN

- 3.01 Eligibility to Participate: Any Employee is eligible to participate in the Plan when he meets the eligibility requirements in Section I of the Adoption Provisions, provided he is not on leave of absence.

If a Participant who terminated employment with the Employer subsequently returns to Service with the Employer in the Eligible Class, the Employee will be eligible to become a Participant effective as of his rehire date if the Employee was (a) vested in any part of his Allocated Employer Contribution Account or (b) the number of consecutive One Year Breaks in Service is less than the aggregate number of years of Service prior to his termination.

- 3.02 Notice of Eligibility: Within a reasonable time after the execution of this Agreement, the Committee shall notify each eligible Employee and give him an opportunity to become a Participant. On each Anniversary Date, the Committee shall notify each Employee eligible to become a Participant for the first time during the ensuing year and, upon his becoming eligible, give him an opportunity to become a Participant.

- 3.03 Application for Participation: Each Employee meeting the eligibility requirements, and agreeing to make any required contributions, shall become a Participant immediately upon completing such enrollment and application forms as may be required by the Committee; provided that, if no Employee contributions are required, an Employee shall become a Participant on the date he meets the eligibility requirements.

- 3.04 Payroll Deductions Authorized: As a condition of participation in the Plan, each Participant required to make contributions under the provisions of paragraph 4.01 shall consent in writing to have the amount of his contribution withheld from his pay by the Employer.

- 3.05 Termination of Participation: A Participant's participation will end when he or his Beneficiaries have received all benefits due to them under the Plan.

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ARTICLE IV. PARTICIPANT'S BASIC CONTRIBUTIONS

- 4.01 Fate of Contributions: If so indicated in the Adoption Provisions, each Participant who is in the Eligible Class shall contribute the amount of Basic Contributions provided in the Adoption Provisions for that part of the Plan Year during which he is a Participant.
- 4.02 How Contributions are Made: Basic Contributions shall be made by payroll deduction in accordance with the consent of the Participant granted pursuant to the terms of paragraph 3.04.
- 4.03 When Contributions are Made: Withholding of a Participant's Basic Contribution shall begin as soon after receipt of his written consent to withhold as the Employer determines to be practicable.
- 4.04 Changes in Contribution Rate: If Section K.2 (b) of the Adoption Provisions is elected, a Participant, by written notice to the Employer and subject to the limitations in this Article IV, may increase or decrease his Basic Contribution Rate, provided that six months have elapsed since he became a Participant. The new rate shall become effective as soon after receipt of the notice as the Employer determines to be practicable. A Participant who changes his Basic Contribution Rate in accordance with the provisions of this paragraph shall not be permitted to change such rate thereafter for a period of six months from the effective date of the last such change in rate.
- 4.05 Discontinuance of Basic Contributions: By written notice to the Employer, a Participant may at any time discontinue his Basic Contributions. Such discontinuance will become effective as soon as practicable following receipt of such notice by the Employer. A Participant who discontinues his Basic Contributions in accordance with the provisions of this paragraph shall not be permitted thereafter to make Basic and Voluntary Contributions for a period of six months from the effective date of such discontinuance, and shall not share in Employer Contributions for the period of time during which he was not making Basic Contributions.
- 4.06 Transfer to Trust: The Employer shall transfer to the Trust the Basic Contributions of each Participant as soon as practicable, but not more than 30 days after the end of the calendar month in which such contributions were withheld from the Participant's pay.
- 4.07 Participant's Interest: A Participant shall at all times be 100% vested in the value of his Basic Contribution Account.

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- 5.01 Rate of Contribution: For the first Plan Year and each Plan Year thereafter, the Employer agrees to contribute, with respect to each Participant who is an Employee in the Eligible Class, the amount determined as provided in Section K.1 of the Adoption Provisions, provided however, that the total contribution during any Plan Year allocated to a Participant who is a Subchapter S Shareholder Employee shall not exceed the lesser of 15% of his Annual Pay or \$7500. If Basic Contributions are required by the Adoption Provisions under the terms of Article IV, Employer Contributions will be made only for those Participants making Basic Contributions and only for that part of the year during which such contributions were made. In no event, however, shall this provision require the Employer to make contributions in excess of the maximum amount deductible under Section 404 (a) (1) (A) or 404 (a) (7) of the Internal Revenue Code or any statutes of similar import.
- 5.02 Disposition of Forfeitures: The non-vested portion of any Account Value in the Participant's account remaining after a termination of employment shall be held in such Participant's account and in the existing investment facility. The current Account Value of any such remaining balance shall, upon a One-Year Break in Service, be forfeited and transferred to the Unallocated Employer Contribution Account and applied to reduce the Employer's future contributions. Prior to such final application, the assets underlying forfeitures held in the Unallocated Employer Contribution Account may be invested in the Interest Accumulation Account or converted to cash and held without interest to the extent it is administratively practical to do so.
- Upon a termination of the Plan, the current Account Value remaining in any terminated Participant's non-vested Allocated Employer Contribution Account shall be transferred to the Unallocated Employer Contribution Account and allocated in accordance with the provisions of Article XII.
- 5.03 Maximum Annual Additions: The maximum "Annual Addition" to a Participant's account during any Plan Year when combined with the total Annual Additions to the accounts of the Participant under any other qualified defined contribution plan maintained by the Employer or any company affiliated with the Employer, shall be the lesser of \$36,875 or 25% of the Participant's current annual compensation.

"Annual Addition" consists of:

- (a) Employer contributions for the year;
- (b) any forfeitures reallocated to the Participant in the year; and
- (c) the lesser of (i) or (ii) below:
 - (i) 50% of the Participant's contributions during the year;
 - (ii) the Participant's contributions in excess of 6% of his current annual compensation.

5.03 Maximum Annual Additions (Continued)

For the purposes of item (c) of the preceding paragraph, Participant's contributions are determined without regard to any rollover contributions as defined under the Internal Revenue Code.

The maximum amount stated above (\$36,875) shall be increased to reflect the cost of living adjustments provided for under Sec. 415 (d) of the Internal Revenue Code (and regulations to be issued thereunder).

In the event any Participant is also a Participant in a defined benefit plan maintained by the Employer or any company affiliated with the Employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any Plan Year shall not exceed 1.4. The defined benefit plan fraction for any year is a fraction of which the numerator is the projected annual benefit of the Participant under the Plan (determined as of the close of the year for which the limitation is being tested), and the denominator is the maximum benefit allowable by law. The defined contribution plan fraction for any year is a fraction of which the numerator is the sum of the Annual Additions to the Participant's account as of the close of the year and the denominator is the sum of the maximum allowable amount of the Annual Additions to such account. For the purpose of applying the limitations contained in this paragraph 5.03, all defined benefit plans (whether or not terminated) maintained by the Employer or any company affiliated with the Employer shall be treated as one defined benefit plan, and all defined contribution plans (whether or not terminated) maintained by the Employer or any company affiliated with the Employer shall be treated as one defined contribution plan.

If the Annual Additions to the accounts of a Participant exceed the limitations, the Committee shall make a correcting allocation as is necessary under this Plan to reduce the total amount of the Annual Addition. Such correcting allocation shall be made first by limiting or eliminating any Voluntary Contributions, and then by reducing the Participant's Allocated Employer Contribution Account and transferring the amount of such reduction to the Unallocated Employer Contribution Account.

5.04 Transfer to Trust: Employer Contributions shall be made and transferred to the Trust in cash within thirty days after the Allocation Date.

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- 5.01 Right to Make Contributions: If the Employer so elects in Section K.3 of the Adoption Provisions, each Participant who is an Employee in the Eligible Class may elect to make Voluntary Contributions in accordance with the provisions of this Article. Such election shall be made in the manner and at the times stipulated by the Employer.
- 6.02 Rate of Contributions: If permitted under Section K.3 of the Adoption Provisions, a Participant may contribute any percentage of his Annual Pay as Voluntary Contributions, provided that such Contributions plus any Voluntary Contributions made under any other qualified pension or profit-sharing plan of the Employer do not exceed 10% (reduced by the excess of the maximum over the minimum Basic Contribution Rate) of his Annual Pay.
- 6.03 How Contributions are Made: Voluntary Contributions shall ordinarily be made by payroll deduction. As a condition to exercising his right to make such contributions, a Participant shall consent in writing to having the amount thereof withheld from his pay by the Employer. From time to time, however, the Employer may under rules uniformly applicable to all Participants, permit Voluntary Contributions to be made otherwise than by payroll deduction.
- 6.04 When Contributions are Made: Withholding of a Participant's Voluntary Contributions shall begin as soon after receipt of his written consent to withhold as the Employer determines to be practicable.
- 6.05 Changes in Contribution Rate: Subject to the limitations stated in paragraphs 6.02 and 10.01, a Participant may, by written notice to the Employer, increase or decrease the rate of his Voluntary Contributions, provided that six months have elapsed since the date of his original election to make such contributions. In the event of such a change, the new rate shall become effective as soon after receipt of the notice as the Employer determines to be practicable. The Participant shall not be permitted to change such rate again until six months after the effective date of the last change.
- 6.06 Discontinuance of Contributions: By written notice to the Employer, a Participant may at any time discontinue Voluntary Contributions. The discontinuance will become effective as soon as practicable following receipt of such notice by the Employer. A Participant who discontinues his Voluntary Contributions in accordance with the provisions of this paragraph shall not be permitted to resume such contributions for a period of six months after the effective date of such discontinuance.
- 6.07 Transfer to Trust: The Employer shall transfer to the Trust the Voluntary Contributions of each Participant as soon as practicable, but not more than 30 days after the end of the calendar month in which such contributions were withheld from the Participant's pay or otherwise received from the Participant.
- 6.08 Participant's Interest: A Participant shall at all times be 100% vested in the value of his Voluntary Contribution Account.

- 7.01 Receipt of Contributions: All contributions received by the Trustee shall become assets of the Trust, to be held, invested, and distributed in accordance with the terms of this Agreement. Before making any investments pursuant to the provisions of paragraphs 7.02 and 7.03, the Trustee, if necessary, may deduct expenses for which the Trustee has not received reimbursement as required in paragraph 14.05.
- 7.02 Investment of Employer's Contributions: The Employer's Contributions and the income attributable thereto shall be invested in accordance with the election made in Section L.1 of the Adoption Provisions.

The Employer may change its election with respect to the investment of prior or future Employer contributions at any time by amendment of the Plan, provided that at least 60 days prior to the effective date of such change, it informs the Trustee in writing of its decision to do so.

If Section L.1 (b) of the Adoption Provisions is elected, the Employer may not thereafter change the investments of prior contributions.

- 7.03 Investment of Participant's Contributions: The Participant's Basic and Voluntary Contributions and, if Section L.1 (b) of the Adoption Provisions is elected, the Employer Contributions, and the income attributable thereto, shall be invested in accordance with the election made by the Participant from among those made available by the Employer in the Adoption Provisions.

Any Participant may, by written request filed with the Committee at least 60 days prior to the effective date of the change, alter his election with respect to the investment of his future contributions, provided that at least 12 months have elapsed since the effective date of his initial election or a subsequent change thereof.

A Participant who has participated in the Plan for a period of 24 months may, by written request filed with the Committee at least 60 days prior to the effective date of the change, alter his election with respect to investment of his prior contributions and may direct the Trustee to transfer all or any portion of his Basic or Voluntary Contribution Account Values to any one or to any combination of the several investment facilities available under the Plan. If Section L.1 (b) of the Adoption Provisions is elected by the Employer, the provisions of this paragraph shall also apply to Employer Contributions. A change thereafter may be made at any time provided that at least 24 months have elapsed since the effective date of the last change.

- 7.04 Trustee May Hold and Distribute Cash: The Trustee may hold assets of the Trust and make distributions therefrom in the form of cash without liability for interest, if for administrative purposes it becomes necessary or practical to do so.

ARTICLE VIII. ACCOUNTS AND ALLOCATION

- 8.01 Unallocated Employer Contribution Account: The Committee shall establish and maintain an Unallocated Employer Contribution Account and shall credit to such account all assets held by the Trustee prior to allocation by the Committee pursuant to the provisions of paragraph 8.03.

Under no circumstances shall any values attributable to forfeitures be refunded to the Employer. Such values shall be applied in the manner provided in paragraph 5.02.

- 8.02 Participant Accounts: The Committee shall establish and maintain the following accounts, or accounts of equivalent purpose, in the name of each Participant:

- (a) Basic Contribution Account, under which the Committee shall account for amounts contributed to the Trust as the Participant's Basic Contributions, and for the investment and distribution thereof;
- (b) Allocated Employer Contribution Account, under which the Committee shall account for amounts allocated thereto from the Unallocated Employer Contribution Account, and for the investment and distribution thereof;
- (c) Voluntary Contribution Account, under which the Committee shall account for amounts contributed to the Trust as the Participant's Voluntary Contributions, and for the investment and distribution thereof.

All investment earnings shall be reinvested and credited in the same investment facility and account in which they were earned.

- 8.03 Allocation: On the Allocation Date, or as soon thereafter as practicable, the Committee shall allocate to the Participants' Allocated Employer Contribution Accounts the amounts then held in the Unallocated Employer Contribution Account, in accordance with the Allocation/Contribution Formula specified in the Adoption Provisions.

All interest, dividend income, gains, losses or expenses, with respect to Participant's accounts, will be allocated to each Participant's account as soon as practicable after they accrue or arise in proportion to the Account Values of the Participant's accounts which are invested in the accumulation facilities from which such interest, dividend income, gains, losses or expenses accrue or arise.

The Account Value of a Participant's account will be determined for each allocation, distribution or withdrawal, but in no event less frequently than once each month.

The assets of the Trust shall be valued at their fair market value.

- 9.01 Time of Distribution: Except as otherwise provided herein, distributions from the Trust shall be made only in the event of retirement, death, disability, termination of employment or termination of the Plan. Payment of benefits will commence not later than the 60th day after the close of the Plan Year in which the latest of the following occurs:
- (a) the date on which the Participant attains Normal Retirement Age;
 - (b) the tenth anniversary of the year in which the Participant commenced participation in the Plan;
 - (c) the date the Participant terminates his Service with the Employer.
- 9.02 Distribution Upon Retirement of Participant: Upon a Participant's retirement at Early, Normal or Late Retirement Date, his interest in any account held in his name shall become fully vested and the Committee shall direct the Trustee to distribute to the Participant all amounts allocated to and held in any account on his behalf. Distribution shall be made in accordance with the election by the Participant under the provisions of paragraph 9.06 pertaining to modes of distribution.
- 9.03 Distribution Upon Death of Participant: Upon the death of a Participant before retirement or other termination of employment, his interest in any account held in his name shall become fully vested and the Committee shall direct the Trustee to distribute all assets allocated to and held in such account on the Participant's behalf. Distribution shall be made in the manner and to the person or persons specified by the Participant under the provisions of paragraph 11.03, pertaining to designation of Beneficiary.
- 9.04 Distribution Upon Disability of Participant: If a Participant's active employment ceases by reason of his total and permanent disability, his interest in any account held on his behalf shall become fully vested and the Committee shall direct the Trustee to distribute to the Participant all amounts allocated to and held in such account as of the date of termination. Distribution shall commence as soon as practicable and shall be made in accordance with the election made by the Participant under the provisions of paragraph 9.06. In determining whether the Participant's disability is such as would qualify for a distribution under this paragraph, the Committee may rely upon a certification by a physician engaged by the Employer, or upon an adjudication by the Social Security Administration that the Participant is disabled within the meaning of the Social Security Act. The date of cessation of active employment for the purposes of this paragraph shall be determined by the Committee.
- 9.05 Distribution Upon Termination of Employment: In the event a Participant's employment is terminated for any cause other than death, disability or retirement, as herein provided, he shall be fully vested in the Account Values of his Basic and Voluntary Contribution Accounts. If he has acquired a vested interest in his Allocated Employer Contribution Account, the Committee shall determine the percentage of that interest as of the date of termination of employment by applying the vesting schedule elected by the Employer in the Adoption Provisions.
- In determining a Participant's current vested interest in Allocated Employer Contribution Account Values, any amounts previously withdrawn from the Allocated Employer Contribution Account shall be added to the Allocated Employer Contribution Account balance before applying the vested percentage and shall be deducted from the product of that application.

9.05 Distribution Upon Termination of Employment (Continued)

Vested Account Values will be distributed to the Participant in accordance with the Participant's election under the provisions of paragraph 9.06 pertaining to modes of distribution.

If a distribution of vested Account Values is made to a Participant who is less than 100% vested in his Allocated Employer Contribution Account, and he has not incurred a One-Year Break in Service, upon his return to Service prior to such break any amount forfeited shall be restored to his account. At any time the Participant's remaining share in his Allocated Employer Contribution Account will be determined by the formula:

$$X = P(AB+D) - D$$
 For purposes of applying the formula: P is the vested percentage at the relevant time; AB is the account balance of the Allocated Employer Contribution Account at the relevant time; D is the amount of distribution.

Any balance remaining in the Participant's Allocated Employer Contribution Account shall be held and applied in accordance with the provisions of paragraph 5.02.

Distribution of any Voluntary and Basic Contribution Account Values shall commence as soon as practicable following the Participant's termination date. If the deferral of distribution of vested Allocated Employer Contribution Account Values has been elected in Section M.3 of the Adoption Provisions, distribution of vested Allocated Employer Contribution Account Values amounting to \$2,000 or more shall be deferred in the manner described in such Section M.3; otherwise, vested Allocated Employer Contribution Account Values shall be distributed as soon as practical following the Participant's termination date. Any vested Allocated Employer Contribution Account Values being held under the Plan in accordance with the provisions in Section M.3 of the Adoption Provisions shall remain subject to the provisions of Article VII of the Plan.

9.06 Modes of Distribution Upon Retirement, Disability, or Termination of Employment:

- (a) Distribution pursuant to the requirements of paragraphs 9.02, 9.04 and 9.05 shall be made, subject to certain limitations hereinafter expressed, in accordance with the Participant's election from the following modes of distribution. The Participant may elect one or a combination of these modes:
 - (1) Conversion of Account Values to annuities under the Group Annuity Contract with distributions being made pursuant to the terms and conditions of the Group Annuity Contract and in such amounts and for such durations as specified in said Contract. Election of this mode is subject to the minimum payment requirements of the Group Annuity Contract;
 - (2) Payment of Account Values in a single sum, in cash.

9.06 Modes of Distribution Upon Retirement, Disability, or Termination of Employment (Continued)

(b) A Participant may not elect the following modes of distribution:

- (1) Payment of interest only to the Participant or a Beneficiary under an annuity contract settlement option;
- (2) Payment in the joint annuity form to the Participant of an amount less than 51% of the payment which would be made under a single life annuity form, unless the Participant's spouse is the joint payee.

9.07 Electing Mode of Distribution -- Normal Payment Mode: Prior to a Participant's Early, Normal or Late Retirement Date, he shall elect a mode of distribution from among those stated in paragraph 9.06. If the mode elected calls for conversion of Account Values to an annuity, as described in paragraph 9.06 (a)(1), the Participant shall be given an opportunity prior to the time of such conversion to state the form of annuity payments that he desires from among those provided by the Group Annuity Contract.

For a Participant who is married on the date retirement benefits commence, the mode of distribution will be a 50% joint and survivor annuity under which the Participant's spouse is named as the joint annuitant, unless the Participant elects otherwise. Such annuity shall be the actuarial equivalent of a single life annuity that may be purchased by his Account Values. If Section J.2 of the Adoption Provisions has been elected, the Committee shall notify each married Participant at least nine months before he is eligible to retire early, or if later, the date his participation in the Plan commenced, of his right to elect not to receive a joint and survivor annuity. If there is no early retirement provision in the Plan, such notification shall be made at least nine months prior to the Participant's Normal Retirement Date. The notice shall also indicate the availability of a written explanation of the terms and effect that election of another form of benefit will have. The Plan Administrator shall furnish the applicable information to the Participant no later than thirty days after receipt of such request. The election period shall end no earlier than ninety days after the Participant is provided with such information. In no event shall the election period expire earlier than ninety days before the commencement of benefits.

A Participant may change his elected mode of distribution at any time before retirement, unless distribution payments have commenced. All elections made pursuant to the terms of this paragraph shall be made in the manner and form prescribed by the Committee.

9.08 Annuity Contract Non-transferable: Any annuity contract issued to a Participant under the terms of this Plan shall be endorsed non-transferable.

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ARTICLE X. WITHDRAWALS

- 10.01 Withdrawals from Voluntary Contribution Account: With the Committee's approval, a Participant may withdraw all or part of the value of his Voluntary Contribution Account after giving at least thirty days' notice of his intention to the Committee. At least sixty days' notice is required with respect to a withdrawal from the Index Accumulation Account. Such notice shall be in writing and shall specify the value to be withdrawn in terms of dollars or percentage of the Account Value. If the reason for the withdrawal and the amount to be withdrawn are determined by the Committee, under rules to be uniformly applied, to be due to the occurrence of any of the events specified in the Adoption Provisions as a Qualifying Emergency, the withdrawal shall not affect any right the Participant may have under the Plan to make additional withdrawals and to continue to make contributions. If the withdrawal is determined by the Committee to be for a purpose other than a Qualifying Emergency, the Participant shall not resume Voluntary Contributions for a period of six months following the date of the withdrawal.
- ✓ 10.02 No Withdrawal from Allocated Employer Contribution or Basic Contribution Account: A Participant shall not be permitted to withdraw any part of the value of his Allocated Employer Contribution Account or of his Basic Contribution Account for any purpose prior to separation of employment.
- 10.03 Distribution of Amounts Withdrawn: Upon receipt of the Committee's approval of a request for withdrawal in accordance with the provisions of paragraph 10.01, the Trustee shall, to the extent necessary, convert account assets to cash and distribute the requested amount to the Participant. Unless the Participant has specified otherwise, any conversions to cash pursuant to this provision shall be made first by converting the portion of the Participant's Voluntary Contribution Account Values invested in the Interest Accumulation Account; second, by converting values in the Balanced Accumulation Account; third, by converting values in the Aetna Variable Fund Accumulation Account; and finally, by converting values in the Index Accumulation Account.

- 11.01 Source of Death Benefits: Death benefits are payable from or with assets held by the Trustee on behalf of the deceased Participant based on the Account Values as of the date on which the Committee receives notification of his death, as determined by the Committee.
- 11.02 Determination of Values: Death benefits shall be the Account Values held by the Trustee for the Beneficiaries of a deceased Participant as of the date of distribution to the Beneficiaries.
- 11.03 Designation of Beneficiary and Settlement Mode: Each Participant shall have a right to designate one or more Beneficiaries to receive any death benefits that may become payable under the Plan by filing with the Committee the forms specified for this purpose. With respect to such benefits, the Participant shall have a right to elect one of the modes of payment specified in paragraph 9.06. Such election shall be made in the manner and on the forms prescribed by the Committee. Any such election shall not apply, however, to death benefits that become payable after commencement of distribution of payments to the Participant; such death benefits shall be payable in accordance with paragraph 11.04.
- 11.04 How Death Benefits Shall Be Paid: Unless the Participant specified otherwise, pursuant to the provisions of paragraph 11.03, the Trustee shall pay death benefits by converting all account assets to cash and transferring the proceeds to the Beneficiary, free of the Trust, as soon as practicable after the Committee has instructed the Trustee to do so. If the Participant specified another method, payment shall be made in the manner specified. In the event a Participant dies while receiving distribution payments through an annuity pursuant to the provisions of paragraph 9.06, death benefits, if any, will be paid in accordance with the terms of the Group Annuity Contract. Any death benefits with respect to which the Participant did not designate a Beneficiary shall be paid to the personal representative of the Participant.
- 11.05 Proof of Death: The Trustee may rely exclusively on the Committee's determination of the fact of death of a Participant and of the right of any person to receive all or part of any death benefit. In making such determination, the Committee may require such proof of death and other evidence as the Committee deems to be necessary. The Committee's determination shall be conclusive upon any person having or claiming any right to death benefits as a consequence of the death of the Participant.

ARTICLE XII. TERMINATION OF PLAN

- 12.01 Employer's Right to Terminate: While the Employer intends this Plan to be permanent, the Employer reserves the right to terminate it. Any such termination shall become effective upon receipt by the Trustee of a written instrument of termination signed by the Employer or a duly authorized representative thereof.
- 12.02 Effect on Employer and Trustee: The Employer shall make no further contributions after termination of the Plan. The Trust shall be continued in existence, however, as long as the Trustee deems it to be necessary for the effective discharge of any remaining duties by the Trustee.
- 12.03 Effect on Participants: Upon termination in whole or in part of the Plan, the Committee shall make an allocation in the manner prescribed by paragraph 8.03, after payment of any expenses properly charged to the Trust and adjustments for capital gain and loss in the Interest Accumulation Account. The Committee shall then direct the Trustee to distribute to the Participants for whom the Plan is being terminated all assets remaining in the Trust for such Participants. Each active Participant for whom the Plan is being terminated shall thereupon be fully vested with a nonforfeitable right to the full Account Values held for his benefit by the Trustee as determined by the Committee.
- 12.04 Discontinuance of Contributions: In the event of a complete discontinuance (not a mere suspension) of contributions under the Plan by the Employer, each Participant's right shall vest in exactly the same manner as stated in paragraph 12.03 with respect to vesting upon termination of the Plan.
- 12.05 No Reversion to Employer: No part of the Trust corpus or income shall revert to the Employer or be used for or diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries. This paragraph cannot be altered or amended.
- 12.06 Merger, Consolidation, or Transfer: In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant would receive upon a termination of the plan immediately after such merger, consolidation, or transfer shall be equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had then terminated.

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ARTICLE XIII. AMENDMENT OF THE PLAN

13.01 Agreement Required: Subject to the restrictions of paragraphs 12.05 and 13.02, the Plan may be amended at any time by a written instrument of amendment signed by the authorized representatives of the Employer and the Trustee.

13.02 Restrictions:

- (a) Any amendments or act which results in the distribution or diversion of any part of the assets of the Trust for purposes other than the exclusive benefit of Participants or their Beneficiaries shall be void.
- (b) Any amendment or modification of the Plan operating in such a manner as to deprive retroactively any Participant or his Beneficiary of benefits accruing from contributions made prior to such amendment or modification shall be void unless the amendment or modification is necessary to conform the Plan to any law, governmental regulation or ruling, or to enable the Plan and Trust to satisfy the requirements of Sections 401 and 501 of the Internal Revenue Code.
- (c) An amendment may not reduce the vested percentage of any Participant below the percentage in effect for such Participant as of the later of (1) the effective date of the amendment or (2) the date of adoption of the amendment.

If an amendment changes the vesting provisions, any Participant who has completed at least five years of Service before the end of the election period specified below, may elect to have the amount of his vested benefit determined on the basis of the Plan provisions in effect immediately prior to the effective date of the amendment. The election period shall begin on the date of adoption of the amendment and end 60 days after the latest of (a) the date of adoption of the amendment, (b) the effective date of the amendment, or (c) the date the Participant is issued written notice of the amendment.

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ARTICLE XIV. TRUSTEE

- 14.01 Accounting: The Trustee shall keep accurate and detailed accounts of all receipts, investments, disbursements and other transactions hereunder. All accounts, books and records relating to such transactions shall be open to inspection and audit at all reasonable times by any person designated by the Employer or the Committee.

Within 75 days following the end of each Plan Year and within 75 days after any removal or resignation of the Trustee as provided in paragraph 14.07 hereof, the Trustee shall file with the Committee a written account setting forth all receipts, investments, disbursements and other transactions effected by it during such Plan Year or during the period from the end of the last Plan Year to the date of such removal or resignation, and setting forth the current value of all Trust assets and liabilities. Upon the expiration of 90 days from the date of filing such annual or other accounts, the Trustee shall be forever released and discharged from all liability and accountability with respect to the propriety of its acts and transactions shown in such account, except with respect to any such acts or transactions as to which the Committee or the Employer shall file with the Trustee written objections within such 90-day period.

- 14.02 Trustee's Responsibilities Limited: The Trustee may rely on the representation of the Committee that the Plan and Trust hereby created are qualified within the meaning of Section 401 (a) of the Internal Revenue Code, and the Trustee shall have no obligation to inquire into the continuance of such qualification.

The Trustee shall not be responsible for administration of the Plan established by this Agreement and shall not be obliged to determine whether any particular instruction or direction of the Committee accords with the terms and conditions of same. Neither shall the Trustee be obliged to collect contributions due under this Agreement, to determine whether contributions are in accordance therewith, or to account for allocations to Participants.

The Plan Administrator shall be vested with full and sole responsibility for the investment and management of the Trust assets. The Trustee shall not invest, sell, exchange, encumber or otherwise act with respect to the assets without specific written direction of the Plan Administrator. The Trustee shall incur no liability by complying with any such written direction and shall be under no duty or obligation to review, evaluate or reevaluate the investments made pursuant to such directions.

- 14.03 Information and Receipts: The Committee shall accompany each transfer of contributions to the Trust with such information as the Trustee may reasonably require for purposes of discharging its duties. The Trustee shall give the Committee a receipt for each contribution received and information as to the application thereof.

- 14.04 Administrative Services: The Trustee may appoint one or more administrative agents or contract for the performance of such administrative and service functions as it may deem necessary or desirable for the effective installation and operation of the Trust and Plan.
- 14.05 Expenses: All expenses chargeable to the Trust hereunder may be paid by the Employer. Any amounts not paid by the Employer may be deducted, as determined by the Trustee from the Employer's Contribution or from Participant's Allocated Employer Contribution Accounts. Expenses chargeable to the Trust shall include but not be limited to the following:
- (a) commissions and other sales or service charges;
 - (b) taxes of any kind;
 - (c) administrative and clerical costs;
 - (d) legal fees;
 - (e) Trustee's fee.
- 14.06 Compensation of Trustee: The Trustee shall be compensated by the Employer for its services by payment of the Trustee's fee, the amount of which shall be agreed upon from time to time between the Plan Administrator and the Trustee; provided, however, that no Trustee who receives full-time compensation from the Employer shall receive compensation for services provided to the Plan except reimbursement of expenses properly and actually incurred in conjunction with the operation of the Trust.
- 14.07 Resignation or Removal of Trustee: The Trustee may resign as Trustee at any time by providing the Plan Administrator with written notice of the resignation. Upon receipt of such notice the Plan Administrator shall forthwith appoint a successor Trustee who shall notify the Trustee in writing that it has accepted the appointment as successor Trustee. Upon receiving such notice of acceptance, the Trustee may first reserve and liquidate such assets as are necessary for the payment of its compensation and expenses and for the payment of any liabilities involving the Trustee. It shall then transfer to the successor Trustee the remaining assets of the Trust and all records pertinent thereto. If the Plan Administrator fails to appoint a successor Trustee within 60 days of receiving the Trustee's resignation, the Trustee may appoint a successor Trustee.

Except for removal for cause, the Plan Administrator may remove the Trustee only by first designating a successor Trustee and by providing the Trustee with not less than 60 days' notice of the removal. The removal shall not be effective until the Trustee is notified in writing by the successor Trustee that it has accepted the appointment as successor. In such case the Trustee, after first reserving and liquidating such assets as may be necessary for the payment of its compensation and expenses and for the payment of any liabilities involving the Trustee, shall transfer to the successor Trustee the remaining assets of the Trust and records pertinent thereto.

ARTICLE XV. ENFORCEMENT AND RELATED LEGAL MATTERS

- 15.01 Enforcement by Committee: The Committee shall be responsible for the administration, application and interpretation of the Plan and shall have the responsibility for its enforcement for or on behalf of the Participants or other persons having an interest in the Plan.
- 15.02 Indemnification by Employer: The Employer hereby covenants and agrees that it will at all times indemnify and hold harmless the Trustee from any and all liability that may arise in connection with this Agreement and which does not arise from the negligence or willful misconduct of the Trustee.
- 15.03 Legal Action by Trustee: The Trustee shall not be required to institute or engage in any legal action or to take any action other than required by this Agreement, unless it expressly agrees in writing to do so and unless arrangements have been made to indemnify it fully for all expenses that may be incurred in connection therewith.

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ARTICLE XVI. MISCELLANEOUS

- 16.01 Benefits Solely from Trust: As a condition precedent to participation in the Plan, each Employee agrees that he shall look solely to the assets of the Trust for the payment of benefits to which he is entitled.
- 16.02 Liability for Benefits, Contributions and Expenses:
- (a) The Employer assumes no responsibility or liability for the payment of benefits under this Plan. Such benefits shall be paid solely from the Trust in accordance with the terms and conditions of this Agreement.
 - (b) The Employer is not legally obligated to make contributions to the Trust. No action or suit shall be brought by any Participant or other person against the Employer to compel contributions.
 - (c) If benefits are payable to a minor or incompetent or to a person incapable of handling the disposition of his property, the Committee may instruct the Trustee to pay such benefits to the guardian, legal representative or person having the care and custody of such person. Such distribution shall completely discharge the Employer and Trustee from all liability with respect to such benefit.
 - (d) The Employer shall pay all expenses of the Trust.
- 16.03 Non-Assignability of Benefits: No Participant, Participant's personal representative or Beneficiary shall have the right to alienate, encumber or assign any of the benefits, proceeds or other interest in the Trust established under this Plan, while such benefits, proceeds or other interests are in the possession of the Trustee; nor shall such benefits, proceeds or other interests be subject to attachment, garnishment, execution or other legal process.
- 16.04 Taxes and Fees:
- (a) Any taxes that may be levied or assigned upon the assets of the Trust or upon the income arising therefrom or that may be incurred by the Trustee in the performance of its duties shall be paid pursuant to the terms of paragraph 14.05.
 - (b) Payment of the Trustee's fees and of any indebtedness incurred by the Trustee in the performance of its duties shall be made pursuant to the terms of paragraphs 14.05 and 14.06.
- 16.05 Transfers from Other Qualified Plan: Notwithstanding any other provisions hereof, the Employer with the consent of the Trustee and the Plan Administrator, may cause to be transferred to the Plan, all or any of the assets held (whether by a trustee, custodian, insurer or otherwise) in respect to any other plan or account which satisfies the applicable requirements of the Internal Revenue Code of 1954 as amended, and which is maintained for the benefit of any of the Participants. Any such assets so transferred shall be accompanied by written instructions from the Employer, naming the Participants for whose benefit such assets have been transferred and showing separately the respective contributions by the Employer and by the Participants and the current value of the assets attributable thereto. Such written instructions shall be conclusive upon the Trustee. Upon transfer the provisions of this Plan and Trust Agreement shall govern and shall be binding.

ARTICLE XVI. MISCELLANEOUS (Continued)

16.06 Rollover Contributions: With the consent of the Trustee and the Committee, a Participant who has had distributed to him his entire interest in a plan which meets the requirements of Section 401(a) of the Internal Revenue Code may, in accordance with procedures approved by the Committee, transfer to the Trustee of this Plan that portion of the distribution, which is received from such other plan and which satisfies the "rollover" requirements of Section 402(a)(5) of the Internal Revenue Code; provided the following conditions are met:

- (a) The transfer occurs on or before the 60th day following his receipt of the distribution from such other plan (unless such distribution was deposited in an Individual Retirement Account as described in item (c) below); and
- (b) The distribution from such other plan qualifies as a lump sum distribution within the meaning of subsection 402(e)(4)(A) of the Internal Revenue Code; and
- (c) The amount transferred is equal to the distribution he received from such other plan which was rolled over into an Individual Retirement Account established solely for the purpose of holding such distribution (and to which no other contributions were directed by the Participant), plus earnings accrued during the period such distribution was held in the Individual Retirement Account.

The Committee may require such information from an Employee desiring to make such a transfer as it deems necessary or desirable to determine that the proposed transfer will meet the requirements of this paragraph 16.06. Upon approval by the Committee, such amount shall be transferred to this Trust and shall be credited to such Employee's Allocated Employer Contribution Account. The Employee shall at all times be 100 percent vested in such amount.

16.07 Internal Revenue Code Qualification: Within a reasonable time after the date of adoption, the Employer shall submit this Plan to the appropriate District Director of the Internal Revenue Service for the purpose of obtaining a determination letter indicating that this Plan meets the requirements of Section 401(a) of the Internal Revenue Code. If the District Director determines that this Plan does not qualify, or if this Plan fails to remain qualified, the Employer shall make every effort to modify or amend this Plan in order to attain qualification. However, if this Plan fails to qualify or remain qualified, this Plan shall terminate and distributions and termination shall be effected in accordance with the provisions of Article XII.

16.08 Applicable State Law: This Plan shall be construed in accordance with the laws of the state in which the Trustee resides or maintains its principal place of business.